IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.677 of 2001

Gopala Ramanath .. Appellant/complainant

vs.

Muthuvel .. Respondent/1st accused

This Criminal Appeal is filed against the judgment passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.5800 of 1989 dated 11.06.2001.

For Appellant : Mr.V.Kannan
For Respondent : Ms Madhumathi

JUDGMENT

This appeal has been preferred against the Judgment in C.C.No.5800 of 1989 on the file of the learned Additional Chief Metropolitian Magistrate, Egmore, Chennai. The complainant, who had lost his case before the trial Court in a private complaint preferred by him under Section 200 of Cr.P.C. against the accused for an offence under Sections 341,342,384,385 and 506(ii) of IPC r/w 34 of IPC, is the appellant herein.

2. The short facts narrated in the complaint by the complainant against the accused are that the complainant is doing Real Estate business in the name and style of "M/s IVY Real Estate" and that P.W.2 is the Manager of the said business. During September 1988, one Selvarathinam had approached the complainant and offered his land measuring 9 acres 83 cents at Vadanemmeli Village, Chengleput District for sale and also entered into an agreement with the complainant. When the complainant was in search of a prospective purchaser of the said land, A2 a real estate broker brought one Sankaran and introduced him to the accused as a prospective buyer. After visiting the lands, Sankaran did not pursue the matter. Thereafter, one J.Mohan Joseph, Real Estate Agent had introduced Anilkumar and Jagadishkumar to the complainant and they have expressed their desire to purchase the said land and in pursuance of it, they have paid an advance amount of Rs.2,00,000/- to the complainant on 21.12.1988 and that the sale

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deed was also executed in their favour in respect of the said land on 20.1.1989. According to the complainant, A2 has not rendered any service in respect of the sale of the land in favour of Anilkumar and Jagadishkumar. In the mean time, A2 had preferred a complaint against the complainant with Teynampet Police on 17.2.1989. Two policemen came to the house of the complainant along with A2 and took him to the Teynampet Police Station informing that he was wanted by A1, the Inspector of Police where A1 abused the complainant and also his Manager(P.W.2) and had assaulted both of them with hands and lathy and under threat and under criminal intimidation, A1 demanded Rs 1,00,000/- to the complainant to be paid to A2. Fearing the arrest and harassment by A1, the complainant proceeded to his house escorted by constables Babu, Ayyampillai and A2 and withdrew Rs.50,000/- from the South Indian Bank,Mylapore Branch,Chennai and returned to the police station with money and produced before A2 which was received by A1 and kept in his cubboard. When the complainant demanded a receipt, again A1 threatened to arrest the complainant, if he divulged the matter to anyone. A2 also abused the complainant in filthy language. The complainant has also approached the Principal Sessions Court, Chennai for Anticipatory Bail. But the said application was dismissed on the ground that no case was filed against the complainant. Hence the complaint.

3. After taking cognizance of the complaint preferred by the complainant, the learned trial Judge, after securing the accused, on summons, furnished copies under Section 207 Cr.P.C. and framed charges under Sections 341,342,384,385 and 506(ii) of IPC r/w 34 of IPC, when questioned, the accused pleaded not guilty.

4. On the side of the complainant, P.Ws 1 to 8 were examined and Exs P1 to P5 were examined.

4a. P.W.1 is the complainant, who would narrate what he had stated in the complaint. P.W.2 is the Manager of P.W.1, who would corroborate the evidence of P.W.1. P.W.3 is the owner of land measuring 9 acres and 83 cents at the relevant point of time, who had executed a sale deed in favour of one Anilkumar and Jagadishkumar through P.W.1. P.W.4 also speaks about the transaction which took place between P.W.1 and A1. P.W.5 also speaks about the transaction which took place between P.W.1 and Anilkumar and Jagadishkumar. P.W.6 is Jagadishkumar, one of the purchasers of the land from Selvarathinam. P.W.7 is the wife of P.W.1. She would depose that on 17.2.1989 at about 6.00a.m her husband P.W.1 was taken to the police station by two police constables. P.W.8 is the Manager of the South India Bank Ltd., Mylapore Branch, Chennai. According to him, P.W.1 had withdrawn a sum of Rs.50,000/- on 17.2.1989 from his account by way of Ex P3 cheque. Ex P4 is the ledger extract maintained in the said bank in respect of the account relating to P.W.1. Ex P5 is the statement of account of P.W.1.

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5. Pending trial, A2 was absconding and as against him the case has been spilt up as C.C.No.9239 of 1993.

6. When incriminating circumstances were put to the accused, A1 would deny his complicity with the crime.

7.After going through the oral and documentary evidence, the learned Trial judge has come to a conclusion that the charges levelled against the accused have not been proved beyond any reasonable doubt and accordingly acquitted the accused. Aggrieved by the findings of the Trial Judge, the complainant has preferred this appeal.

8. Now the point for determination in this appeal is whether the findings of the learned trial Judge is perverse in nature to warrant any interference from this Court?

9. The POINT:
It is seen from the evidence of P.W.3 to P.W.6 that there were some transactions in connection with the real estate business between P.W.1 and A2. One Selvarathinam had approached the complainant for selling his land measuring 9 acres 83 cents at Vadanemmeli Village, Chengleput District. When the complainant was in search of a prospective buyer, A2 approached the complainant with a prospective buyer by name Sankaran but after visiting the lands, the said Sankaran could not pursue the matter further. But subsequently, the land was sold to P.W.6 Jagadishkumar. It is the case of the complainant that subsequently, A2 had preferred a complaint with A1, who took P.W1 and P.W.2 to the police station and beat them with hands and lathy and criminally intimidated them and directed P.W.1 to pay a sum of Rs.50,000/- to A2 towards brokerage and also another sum of Rs.5,000/- to him. It is in evidence through P.W.8 that the said amount of Rs,50,000/- was drawn by P.W.1 and was handed over to A2 who in turn had handed over the same to A1 and that the receipt was issued by A2 to P.W.1. According to P.W.1,the occurrence had taken place on 17.2.1989 but admittedly the private complaint was preferred only on 4.5.1989. The reason offered by P.W.1 is that A1 being a police officer may file a false case against him. But the learned trial Judge had acquitted the accused on the ground that there is no proper explanation for the long delay in preferring the complaint and also on the basis of the discrepancies in the evidence of P.W1 and P.W.2. As correctly pointed out by the learned counsel appearing for the appellant in Lachman Singh-v- State of Haryana (2007(1) Supreme Court Cases(cri) 123), the minor discrepancies in the evidence of P.W.1 and P.W.2 can be ignored but the fact remains why there is a long inordinate delay in preferring the complaint before a Court of law.

10. Yet another circumstances glares at the face of the case of the complainant is that he had moved the Principal Sessions Court, Chennai under Ex P1 for Anticipatory bail. The natural conduct of a person, who is

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under the constant threat of a police officer, will be to approach the higher officials like Commissioner of Police to prefer a complaint against the concerned police officials. Even after handing over the said amount of Rs.55,000/- to the accused concerned, P.W.1 has not chosen to prefer any complaint with the higher police officials.

11. The learned counsel appearing for the appellant relying on a decision reported in Trimukh Maroti Kirkan-v- State of Maharashtra(2007 (1) Supreme Court Cases(cri) 80) and contended that the complainant P.W.1 is not in a position to let in evidence in respect of a thing which had happened inside the police station. The relevant paragraph relied on by the learned counsel for the appellant in the above cited decision runs as follows:

> "If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties,(See Stirland.v Director of Public Prosecutions(1944 AC 315:(1944)2 AII ER 13(HL) quoted with approval by Arijit Pasaypat,J in State of Punjab-v- Karnail Singh(2003) 11 SCC 271: 2004 SCC (cri) 135). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b)appended to this section throws some light on the content and scope of this provision and it reads: (b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him."

There cannot be two opinion with regard to the principles laid down by the Honourable Apex Court in the said ratio. But in the present facts of the case, the non explanation of inordinate delay in preferring the complaint atleast before the Judicial Magistrate will cut at the root of the case of the complainant.

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12. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge who on the basis of the available evidence has come to a correct conclusion that the charges levelled against the accused have not been proved beyond any reasonable doubt.

13. In fine, the appeal is dismissed confirming the Judgment of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.5800 of 1989 dated 11.6.2001.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. The Additional Chief Metropolitan Magistrate, Egmore, Chennai

2. The Chief Judicial Magistrate, Egmore, Chennai.

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